

ESTTA Tracking number: **ESTTA490273**

Filing date: **08/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Joseph Campagna & Sons Inc.		
Entity	Corporation	Citizenship	New York
Address	186-25th Street Brooklyn, NY 11232 UNITED STATES		
Attorney information	Christopher J. Day Law Office of Christopher Day 9977 North 90th Street, Suite 155 Scottsdale, AZ 85258 UNITED STATES chris@daylawfirm.com Phone:602-258-4440		

### Registrations Subject to Cancellation

Registration No	3574792	Registration date	02/17/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	ACAVA LIMITED 167, MERCHANTS STREET VALLETTA VLT 1174, MALTA		

### Goods/Services Subject to Cancellation

Class 029. All goods and services in the class are cancelled, namely: Milk; Dairy products excluding ice cream, ice milk and frozen yogurt; Edible oils and fats; Soy-based food beverage used as a milk substitute
Class 030. All goods and services in the class are cancelled, namely: Bread; Dough; Flour; Food leavening agents; Frozen confectionery; Frozen yoghurt; Ice cream; Molasses syrup; Pastries; Processed cereals; Baking-powder

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3653602	Registration date	07/14/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	ACAVA LIMITED 167, MERCHANTS STREET VALLETTA VLT 1174, MALTA		

## Goods/Services Subject to Cancellation


Class 029.

All goods and services in the class are cancelled, namely: Dairy products excluding ice cream, ice milk and frozen yogurt; Edible oils and fats; Milk; Soy-based food beverage used as a milk substitute

## Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85435434	Application Date	09/29/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BIANCA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1994/03/01 First Use In Commerce: 1994/03/01 Canned tomatoes; Cheese; Edible oils; Tomato puree Class 030. First use: First Use: 1994/03/01 First Use In Commerce: 1994/03/01 Pizza sauce; Spices		

U.S. Registration No.	1887319	Application Date	03/23/1994
Registration Date	04/04/1995	Foreign Priority Date	NONE
Word Mark	BIANCA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1994/03/01 First Use In Commerce: 1994/03/01 cheese, blended edible oils Class 030. First use: First Use: 1994/03/01 First Use In Commerce: 1994/03/01 tomato sauce, pizza sauce, spices Class 042. First use: First Use: 1994/03/01 First Use In Commerce: 1994/03/01 wholesale and retail food stores		

Attachments	85435434#TMSN.jpeg ( 1 page )( bytes ) BIANCA Cancellation.pdf ( 5 pages )(98584 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher J. Day/
Name	Christopher J. Day
Date	08/21/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In re:*

Mark: BIANCA  
Registration No.: 3574792  
Date of Registration: February 17, 2009

Mark: BIANCA  
Registration No.: 3653602  
Date of Registration: July 14, 2009

**Joseph Campagna & Sons Inc.,**  
**Petitioner,**

**v.**

**ACAVA Limited,**  
**Registrant.**

**Cancellation No.**

**PETITION TO CANCEL**

Petitioner, Joseph Campagna & Sons Inc., a corporation organized under the laws New York with a business address of 186 – 25<sup>th</sup> Street, Brooklyn, NY 11232, believes that it is or will be

damaged by Registration No. 3574792 and Registration No. 3653602 and hereby petitions to cancel same.

As grounds of this Petition, it is alleged that:

1. Since at least as early as March 1994, and well before any date that Registrant can claim priority in its mark, Petitioner, individually and or through related persons and entities, has used the mark BIANCA in connection with canned tomatoes, cheese, edible oils, tomato puree, pizza sauce and spices.
2. On April 4, 1995, Petitioner was awarded U.S. Reg. No. 1887319 for the mark BIANCA in connection with “cheese, blended edible oils, tomato sauce, pizza sauce and spices.” Title and status copies of Petitioner’s registration are attached as Exhibit A.
3. Petitioner has used the mark BIANCA in connection with the goods identified in U.S. Reg. No. 1887319 since at least March, 1994.
4. On September 29, 2011, Petitioner filed App. Ser. No. 85435434 to register BIANCA for “canned tomatoes; cheese; edible oils; tomato puree; pizza sauce; spices.” Title and status copies of Petitioner’s application are attached as Exhibit B.
5. Petitioner has used the mark BIANCA in connection with the goods identified in App. Ser. No. 85435434 since at least March, 1994.

6. On January 18, 2012, the examining attorney reviewing Petitioner's application issued a refusal to register Petitioner's mark, indicating that Registrant's marks are a bar to registration of Petitioner's mark under Section 2(d) of the Lanham Act.
7. The application to register the mark in Registration No. 3574792 was filed on a 44(d) basis on December 13, 2007 and was assigned App. Ser. No. 77350973. The Section 44(d) application claimed a priority date of December 12, 2007.
8. Upon information and belief, with respect to the mark in Registration No. 3574792, Registrant can claim a priority date no earlier than December 12, 2007.
9. The application to register the mark in Registration No. 3653602 was filed on a 44(d) basis on July 22, 2008 and was assigned App. Ser. No. 77528069. The Section 44(d) application claimed a priority date of April 22, 2008.
10. Upon information and belief, with respect to the mark in Registration No. 3653602, Registrant can claim a priority date no earlier than April 22, 2008.

11. Petitioner alleges that Petitioner's continued and legal use of Petitioner's BIANCA mark will be impaired by the continued registrations of said BIANCA marks of Registrant.

12. Upon information and belief, Registrant's registration and use of the marks in Registration No. 3653602 and Registration No. 3574792 creates a likelihood of confusion with Applicant's mark within the meaning of Section 2(d) of the Lanham Act.

WHEREFORE, Petitioner prays that Registration No. 3653602 and Registration No. 3574792 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated August 21, 2012.

/Christopher J. Day/  
Christopher J. Day, Attorney for Petitioner  
Law Office of Christopher Day  
9977 North 90th Street, Suite 155  
Scottsdale, AZ 85258  
Telephone: (602) 258-4440  
Facsimile: (602) 258-4441

## **CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited on August 21, 2012, in the U.S. mail, first class postage pre-paid, addressed to Registrant at the following address:

ACAVA Limited  
167, Merchants Street  
Valletta VLT 1174  
Malta

/Christopher J. Day/  
Christopher J. Day